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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 v.

20 CR 330 (AJN)

6 GHISLAINE MAXWELL,

7 Defendant.

Jury Trial

8 -----x

9 New York, N.Y.  
10 December 27, 2021  
11 10:30 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the  
18 Southern District of New York

19 BY: MAURENE COMEY

20 ALISON MOE

21 LARA POMERANTZ

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24 HADDON MORGAN AND FOREMAN

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LAURA A. MENNINGER

-and-

BOBBI C. STERNHEIM

-and-

COHEN & GRESSER

BY: CHRISTIAN R. EVERDELL

Also Present: Amanda Young, FBI

Paul Byrne, NYPD

Sunny Drescher,

Paralegal, U.S. Attorney's Office

Ann Lundberg,

Paralegal, Haddon Morgan and Foreman

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1 (Trial resumed; jury not present)

2 THE COURT: I did receive a note.

3 May we please have the following items: Different  
4 colored Post-Its; white paperboard; highlighters, different  
5 colors; and then Matt's transcript; and then also may we have a  
6 definition of "enticement."

7 So we're going to get started on the supplies. We'll  
8 get them colored Post-Its, white paperboard. I'm not sure  
9 exactly what they mean but we'll try and find a large pad, and  
10 we'll also give them a whiteboard and dry erase markers and  
11 then highlighters.

12 Ms. Moe, Matt's transcript you'll get printed  
13 immediately?

14 MS. MOE: Yes, your Honor.

15 THE COURT: Okay. And then I'll hear from the parties  
16 as to how they would like to respond to the request for a  
17 definition of "enticement."

18 MS. MOE: Your Honor, with respect to the jury's  
19 question regarding enticement, our view is that the Court's  
20 instruction, which is on page 21, instruction number 15: "The  
21 terms persuaded, induced, enticed, and coerced have their  
22 ordinary everyday meanings." That remain true now, and so we  
23 would propose referring them to that portion of the Court's  
24 instruction.

25 MR. EVERDELL: Your Honor?

LCRVMAXT

1 THE COURT: Just a moment.

2 Trying to get my things up and running here.

3 Yes.

4 MR. EVERDELL: Yes, your Honor.

5 So I think there are -- if I recall, there are cases  
6 that do try to define those words in a little bit more detail.  
7 I don't have those cases at my fingertips and I'm trying to get  
8 them online, but I don't think we have WiFi in the courtroom.

9 THE COURT: I have one. *United States v. Almonte*, 16  
10 CR 670; and *United States v. Dupigny*, 19 CR 528, gave a little  
11 bit of elaboration on that series of words.

12 For "entice" -- I think this is true for both those  
13 cases, I'll confirm -- they provided in the charge that  
14 "entice" means to attract, induce, or lure using hope or  
15 desire. I think I recall, Mr. Rohrbach, you referenced that  
16 definition at one point when we were discussing an issue, if  
17 I'm not mistaken.

18 Is that what you had in mind, Mr. Everdell?

19 MR. EVERDELL: The one I was thinking of, I think, is  
20 the one -- I'm trying to find the name, is it -- should be in  
21 my notes. Just give me one minute, your Honor. The one where  
22 we were arguing the Rule 29, which I cited to the Court,  
23 *Broxmeyer*, I think; am I correct about that?

24 THE COURT: I don't know. This was the causation --  
25 you wanted me to define with respect to causation, is that

LCRVMAXT

1 the --

2 MR. EVERDELL: One moment, your Honor.

3 THE COURT: I think it was -- it was the one I was  
4 talking about with the issue of causation, but I believe that  
5 case also tried to define the words separate and apart from the  
6 causation issue.

7 MS. MOE: Your Honor, the government would have no  
8 objection to the Court providing the instructions set forth in  
9 *Almonte* and *Dupigny*.

10 THE COURT: That's the model I have. Those charges, I  
11 believe, also provided the language that we did include, which  
12 is what the parties agreed on, which is that these words have  
13 their ordinary meaning.

14 So on the table derived from *Almonte* and *Dupigny* is:  
15 "Entice" means to attract, induce, or lure using hope or  
16 desire. I think we would also reference them back to the line  
17 that you indicated, Ms. Moe.

18 MS. MOE: Yes, your Honor.

19 THE COURT: Just a moment.

20 MR. EVERDELL: Your Honor, I'm sorry.

21 THE COURT: Take your time.

22 MR. EVERDELL: Because I don't have internet access,  
23 so I can't pull it up on my computer.

24 THE COURT: *Broxmeyer*, which is 616 F.3d 120, defined  
25 "entice" as "to draw on by exciting hope or desire; allure."

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1 MR. EVERDELL: Your Honor, I think then we'll just go  
2 with the *Dupigny* and *Almonte* one that you raised before.

3 THE COURT: Okay.

4 MS. MOE: Thank you, your Honor.

5 And we also now have the transcript of Matt's  
6 testimony. We're happy to hand that up.

7 THE COURT: Okay. One of my law clerks will grab that  
8 please and take it to the CSO, while Ms. Williams is getting  
9 the supplies; so that just goes to the CSO.

10 In response to the note, I will write: Dear jury, we  
11 are gathering the supplies you requested. We've sent back  
12 Matt's transcript. As for your question regarding the  
13 definition of enticement -- could you give me the page and line  
14 again of the charge, Ms. Moe?

15 MS. MOE: Yes, your Honor. It's on pages 21 and 33;  
16 those are instruction number 15 and also instruction number 26.

17 THE COURT: Okay. So for page 21, what's the line  
18 number or lines?

19 MS. MOE: It's on lines 5 and 6, your Honor.

20 THE COURT: And for 33?

21 MS. MOE: They are on the same lines, your Honor, on  
22 lines 5 and 6, page 33.

23 THE COURT: Okay. I left my charge back there.

24 So I'll refer them to pages 21 and -- page 21, lines 5  
25 and 6; and page 33, lines 5 and 6. I will then say: Further,

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1 "entice" means to attract, induce, or lure using hope or  
2 desire.

3 Ms. Moe.

4 MS. MOE: Yes, your Honor. Thank you.

5 THE COURT: Mr. Everdell.

6 MR. EVERDELL: That's fine, your Honor. Thank you.

7 THE COURT: All right. Thank you.

8 I will write that note and send it back. We'll  
9 mark -- I'm sorry, I forget what court exhibit we're on, but  
10 we'll mark this note as the next court exhibit once  
11 Ms. Williams reminds me where we are.

12 All right. Thank you.

13 Yes.

14 MS. STERNHEIM: Judge, I just have a quick statement,  
15 and I'm asking the Court's assistance.

16 You mentioned on Friday that -- I guess it was  
17 Wednesday that we're supposed to wear N95 masks in the  
18 courtroom -- or in the courthouse, I should say.

19 THE COURT: Yes.

20 MS. STERNHEIM: And it's my understanding that one has  
21 been provided for Ms. Maxwell, but she can only wear it in the  
22 courtroom. And I think that that is not a correct health  
23 standard.

24 THE COURT: The rule actually is in the courthouse.

25 MS. STERNHEIM: In the courthouse.

LCRVMAXT

1 THE COURT: Entry into the courthouse is required to  
2 wear an N95 or KN95.

3 MS. STERNHEIM: And I would ask that the Court direct  
4 the marshals to permit her to wear it throughout the day.

5 THE COURT: I will consult with the marshals through  
6 the district executive's office. But my understanding of the  
7 new rule as of today is that entry into the courthouse requires  
8 wearing at all times, except briefly when eating or drinking, a  
9 KN95 or N95. But I'll get confirmation of that.

10 MS. STERNHEIM: Thank you very much.

11 THE COURT: Anything else?

12 MS. MOE: No your Honor. Thank you.

13 MR. EVERDELL: No, your Honor. Thank you.

14 THE COURT: Thank you.

15 (Recess pending verdict)

16 THE COURT: We have another note, which will be Court  
17 Exhibit 13: May we also have Parkinson's transcript.

18 Ms. Moe, you'll provide that?

19 MS. MOE: Yes, your Honor. We'll take care of that  
20 right away.

21 THE COURT: Okay.

22 And let me just note we have now sent back everything  
23 requested in the prior note in terms of supplies, Matt's  
24 transcript, as well as the response from me that I outlined  
25 last time.

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1 Anything else, counsel?

2 MS. MOE: No, your Honor. Thank you.

3 MR. EVERDELL: No, your Honor.

4 THE COURT: Thank you.

5 (Recess pending verdict)

6 THE COURT: I have a note.

7 May we please have the transcript of David Rodgers.

8 MS. MOE: Yes, your Honor. We'll take care of that  
9 right away.

10 THE COURT: Other issues to raise?

11 MS. MOE: Not from the government, your Honor.

12 Thank you.

13 MR. EVERDELL: Not from the defense.

14 THE COURT: We don't know what time the jury wishes to  
15 deliberate to this evening. My inclination would be to -- it's  
16 up to them when they wish to stop, so I assume we'll get a  
17 note. So I think we'll wait for that. But I am inclined to  
18 think about, if they are not done, extending deliberations  
19 tomorrow for at least some amount of time. But I'll hear from  
20 you on that. So you can think about it or respond to it now,  
21 Ms. Sternheim.

22 MS. STERNHEIM: I would just say that I think the jury  
23 should basically set its own schedule. You can suggest if they  
24 want a longer day, but I don't think we should be pushing them.  
25 They seem to be working very studiously and they seem to have a



LCRVMAXT

1 mind of their own. Because last week the Court invited them to  
2 sit the extra day and they declined that. So an inquiry may be  
3 appropriate, but I don't think telling them what they should do  
4 is necessarily the right thing to do.

5 THE COURT: Well, I have told them previously that  
6 they are here till at least 5. I think the question is  
7 whether, in light of the circumstances we find ourselves, we  
8 should encourage longer, if it's available to them. But you  
9 think about it. I'll hear from you. I'm not intending to do  
10 anything just yet. I presume we will hear from them as to this  
11 evening, but think about the indication of at least some  
12 extension of hours tomorrow if they have not completed the  
13 task.

14 All right? Thank you.

15 (Recess pending verdict)

16 THE COURT: I have a note.

17 Under Count Four, if the defendant aided in the  
18 transportation of Jane's return flight, but not the flight to  
19 New Mexico, where/if the intent was for Jane to engage in  
20 sexual activity, can she be found guilty under the second  
21 element?

22 I'm going to let you take a -- if you want to just  
23 take a look at the note. Counsel, you're welcome to take a  
24 photo of it, if that helps.

25 MS. STERNHEIM: Thank you.

LCRVMAXT

1 THE COURT: Mark the note as Court Exhibit 14.

2 THE DEPUTY CLERK: 15.

3 THE COURT: 15.

4 Counsel, soon I'll look for your proposals.

5 Another note from the jury. This one says: We would  
6 like to end deliberations at 5 p.m. today.

7 So we'll take up extending deliberations after we  
8 resolve the response to this question.

9 (Counsel conferred)

10 THE COURT: All right. Let me get a proposal.

11 MR. EVERDELL: Happy to talk, your Honor.

12 THE COURT: Counsel, are you ready?

13 MS. MOE: I apologize, your Honor. Can we just have  
14 one more moment to confer with our supervisor?

15 THE COURT: Okay.

16 MS. MOE: Thank you.

17 (Counsel conferred)

18 MS. MOE: Thank you, your Honor.

19 Apologies for the delay.

20 THE COURT: Defense counsel, are you ready?

21 MS. STERNHEIM: Yes.

22 THE COURT: Okay. Go ahead, Ms. Moe.

23 MS. MOE: Your Honor, our proposal would be to refer  
24 the jurors to instruction number 21 on page 28 of the Court's  
25 instructions, which pertains to comprehensive instruction with

LCRVMAXT

1 respect to the second element. Beyond that, we're not able to  
2 parse the question because we find it confusing; so we think  
3 the safest course is to refer the jurors to the comprehensive  
4 instruction with respect to the second element.

5 THE COURT: Mr. Everdell.

6 MR. EVERDELL: Your Honor, I think the answer to this  
7 question is no, and I'll tell you the rationale for this.

8 As to the jurors' note, they've clearly separated out  
9 in their minds the flight to New Mexico versus the flight back  
10 from New Mexico. And in their minds, there still is a  
11 question, it would seem, that the flight -- whatever the  
12 purpose of the flight to New Mexico was, whether it was for  
13 illicit sexual activity or not, that is different from the  
14 purpose of the flight back from New Mexico. And they are  
15 asking can she be found guilty solely on if there's some aiding  
16 and abetting, some helping of that flight from New Mexico,  
17 which presumably the flight home they're saying.

18 THE COURT: So the flight from New Mexico to where?

19 MR. EVERDELL: Well, there is no record of a flight  
20 from New Mexico. But what they are saying, I think, in this  
21 note is they are separating out in their minds the flight to  
22 New Mexico versus whatever flight she may have taken from New  
23 Mexico. And I would say based on the instructions in the  
24 Court's instructions which the government pointed to, there has  
25 to be -- the significant or motivating purpose of the travel

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1 across state lines has to be that Jane engaged in illicit  
2 sexual activity. There is no significant or motivating purpose  
3 of a return trip where Mr. Epstein wasn't present; it's just a  
4 return trip from New Mexico. That would not be a significant  
5 or motivating purpose. She is just presumably going home, but  
6 is not for the purpose of engaging in illicit sexual activity.

7 The testimony, if we are to believe it, is that she  
8 went to New Mexico for some purpose to engage in sexual  
9 activity, that's if you believe Jane's testimony. But  
10 returning from there is not that purpose. Returning is  
11 returning, or it's going somewhere else; it's going somewhere  
12 away from where -- at least in the record, the evidence in the  
13 record, if there is any -- Epstein was presumably in New  
14 Mexico. This is her leaving New Mexico. So I don't think that  
15 qualifies as a significant or motivating purpose. That travel  
16 across state lines is for some other purpose.

17 MS. MOE: Your Honor, I don't believe this note is  
18 that clear about what flight we're talking about. The note  
19 begins by talking about an unspecified return flight, and then  
20 it turns to talking about a flight to New Mexico. Then there's  
21 a modifying clause about intent. It is unclear which of the  
22 two flights we are now modifying.

23 I think the safest course here is to refer the jury to  
24 the elements of the crime. I think guessing at what flight  
25 they may be talking about is sort of beyond the reach of this

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1 question because they haven't identified a flight here.

2 MR. EVERDELL: Your Honor, I think they've been fairly  
3 clear. They say: If the defendant aided in the transportation  
4 of Jane's return flight, but not the flight to New Mexico. The  
5 only evidence we have of a flight to New Mexico with Jane is  
6 the one in the flight logs, and it is a flight to New Mexico.  
7 And so the return flight would be some other flight besides the  
8 flight to New Mexico.

9 She is also alleged that -- and to be honest, I think  
10 it was a little unclear what may have happened in New Mexico  
11 based on her testimony; but if there was any illegal sexual  
12 conduct, the flight to New Mexico, this is what they are  
13 debating, because they say, but not the flight to New Mexico,  
14 where/if the intent was for Jane to engage in sexual activity.

15 Okay. So it seems that the jury is deliberating or at  
16 least trying to decide whether the flight to New Mexico was for  
17 the purpose of engaging in illegal sexual activity. And they  
18 are confused that the return flight that happens after that,  
19 could that be the basis alone for a conviction on Count Four.  
20 Answer is no, because that return flight is not for the purpose  
21 of illegal sexual activity.

22 MS. MOE: Your Honor, at the very least, the answer to  
23 this can't be no, because a jury could infer intent to engage  
24 in sexual conduct and the return of a flight in aiding and  
25 abetting that.

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1           We can't tell which flight we're talking about, which  
2           leg of a potentially multi-leg trip we're talking about. And  
3           so I think here, again, the Court gave a thorough instruction  
4           about this particular element. Because we can't tell which set  
5           of facts they are asking about, I think the proper course here  
6           is to refer the jury to the particulars with respect to this  
7           element.

8           THE COURT: It's difficult to know and to have in my  
9           head, based on the articulation of the question, as well as the  
10          testimony, exactly what they are referring to. I don't know.

11          So I am inclined to follow the government's suggestion  
12          here and to say, I can't provide an additional response to your  
13          question other than to consider carefully the instructions as  
14          to -- I mean, I could either point them to all of the count or  
15          specifically to the second element, since that's what they're  
16          asking about.

17          MR. EVERDELL: If we're going to just refer them to  
18          certain language, I think we refer them to the language in the  
19          last paragraph.

20          THE COURT: Page?

21          MR. EVERDELL: Page 28, instruction number 21, lines  
22          14 through 17.

23          MS. MOE: Your Honor, those particular lines don't  
24          appear to be what the jury is asking about. I recognize that  
25          the note refers to Count Four and the second element, but the

LCRVMAXT

1 entire note seems to be about transportation of some kind. And  
2 so we would propose just referring them to the instruction in  
3 its entirety.

4 MR. EVERDELL: Your Honor, I don't find this note  
5 confusing. And I think simply saying it's confusing --

6 THE COURT: Well, I find it confusing. For example, I  
7 don't know if this is a question about aiding and abetting. I  
8 don't know.

9 MR. EVERDELL: Your Honor, I think this is pretty -- I  
10 think this is a question about whether you can hold her  
11 accountable for a return flight, if you believe that she had  
12 something to do with arranging that return flight from New  
13 Mexico; whereas the first flight to New Mexico may have been --  
14 at least there's some testimony to consider about whether that  
15 was for the purpose of illegal sexual activity. It was not  
16 true of the return flight, the flight back, wherever she was  
17 going, home, somewhere else, somewhere away from Mr. Epstein.

18 I think they are asking, Can we consider if Ms.  
19 Maxwell had anything to do with that flight, arranging of that  
20 flight, whether she can be convicted, because it's on the  
21 return trip from an area where Jane claims she was involved in  
22 sexual abuse.

23 THE COURT: But it says where/if the intent was to  
24 engage -- for Jane to engage in sexual activity.

25 MR. EVERDELL: Right. They are saying with a flight

LCRVMAXT

1 to New Mexico, where/if there was an intent for Jane to engage  
2 in sexual activity. So there is still an open question in  
3 their minds about whether the flight to New Mexico, that  
4 travel, was for the purpose of engaging in illegal sexual  
5 activity.

6 But they are now considering whether the flight out of  
7 New Mexico, if Ms. Maxwell had any -- did anything to do with  
8 that flight, with arranging that flight, could we convict her  
9 on that count alone. Because there is no, I think, evidence  
10 that she arranged the flight going to New Mexico; instead, they  
11 are considering now whether there's any evidence that she may  
12 have arranged the flight out of New Mexico. And is that enough  
13 to provide a conviction on Count Two? And I think the answer  
14 to that is pretty clearly no -- I'm sorry, Count Four I should  
15 have said, not Count Two. Because there's no evidence of that.

16 And there is also -- there is no -- in the  
17 instructions themselves, that would not be a significant or  
18 motivating purpose for that travel across state lines. That  
19 would simply be for her to return home. That's not travel for  
20 the purpose of engaging in illegal sexual activity.

21 MS. MOE: Your Honor, I think this colloquy  
22 illustrates how confusing the note is. We are now guessing at  
23 what hypothetical facts the jury is talking about; and then  
24 guessing hypothetically what their legal question is on top of  
25 that. And I think we're compounding guesswork, what this



LCRVMAXT

1 question is about. And so the question is about the element;  
2 the charge is about that particular element. I think more  
3 guesswork here makes this more confusing and not less  
4 confusing. I think, as the Court pointed out, some aspects of  
5 this note are about aiding and abetting. And so even referring  
6 the jury just to instruction number 21 leaves out that aspect  
7 of the jury's deliberations and their determination on this  
8 particular issue. And so we think the safest course is to  
9 provide the jury with applicable law in this area, and they can  
10 find the facts as they see fit and as they apply to these  
11 particular instructions.

12 MR. EVERDELL: Your Honor, I don't think this is a  
13 question about aid and abetting, broadly speaking. I think  
14 they are talking about the flights to and from New Mexico. I  
15 think that much is pretty clear from the note. And whether or  
16 not Ms. Maxwell had anything to do with arranging that  
17 travel --

18 THE COURT: But your legal contention is she can't be  
19 found guilty of this count unless the jury concludes that she  
20 aided in the transportation to New Mexico.

21 That's not legally accurate, is it?

22 MR. EVERDELL: Your Honor, the instruction itself says  
23 it has to be a significant or motivating purpose for the travel  
24 across state lines.

25 THE COURT: Right.

LCRVMAXT

1 MR. EVERDELL: Right?

2 The travel back to a place where she is presumably not  
3 engaging in illicit sexual activity, that is not a significant  
4 or motivating purpose for that travel.

5 THE COURT: You didn't answer my question.

6 MR. EVERDELL: Maybe I'm confused by the question,  
7 your Honor.

8 THE COURT: To be found guilty on this count, must the  
9 jury conclude that she aided in the transportation of Jane's  
10 flight to New Mexico?

11 MS. MENNINGER: Your Honor, may I interject myself  
12 into this conversation?

13 THE COURT: If you answer the question, I would value  
14 it.

15 MS. MENNINGER: I will.

16 It has to be a place for which the travel was a  
17 significant or motivating purpose for illegal sexual activity.

18 In this hypothetical that they've given in this  
19 question, they have a comma in two places. The first place  
20 they have a comma is after the return flight, comma, but not  
21 the flight to New Mexico, where the intent was for Jane to  
22 engage in sexual activity, comma. So they have excluded out  
23 where they're hypothetically claiming that the flight to New  
24 Mexico was the place for which the intent was for Jane to  
25 engage in sexual activity.

LCRVMAXT

1 THE COURT: Wow.

2 MS. MENNINGER: And they are asking, Can we find her  
3 responsible for the return flight, but not that flight to New  
4 Mexico, where the intent was to engage in sexual activity.  
5 That's why I think they have written it with the commas as they  
6 are.

7 THE COURT: Okay.

8 MS. MENNINGER: So they have to be directed --

9 THE COURT: Let me try again. Can I get a yes or a no  
10 to my question? Is it your legal position that the jury must  
11 conclude, in order to convict on this count, that the defendant  
12 had to aid in the transportation of the flight to New Mexico?

13 MS. MENNINGER: I don't believe that -- no, no, it is  
14 not my contention.

15 THE COURT: Thank you.

16 MS. MENNINGER: And the reason is the indictment does  
17 not specify New Mexico. It could be a flight to New York, for  
18 example. It could be a flight to New Mexico. It could be any  
19 place, the purpose for which was to engage in illegal sexual  
20 activity. So it doesn't have to be to New Mexico.

21 THE COURT: I agree with that.

22 This is why it's difficult to parse the question  
23 without assuming a variety of meanings, and I'm trying to track  
24 your comma argument.

25 MS. MENNINGER: Had they placed the comma after New

LCRVMAXT

1 Mexico rather than the place where they did put the comma, then  
2 that would have told us, can't she be responsible for aiding in  
3 the transportation of the return flight, comma, but not the  
4 flight to New Mexico, comma. That would then put the where/if  
5 the intent was --

6 THE COURT: That would be an entirely different  
7 meaning to the question.

8 MS. MENNINGER: I think so.

9 THE COURT: No, I agree. What I don't know is I don't  
10 know what they meant and I don't know how much weight to put on  
11 that comma placement; because, as you've noted, that precise  
12 sentence without that comma has an entirely different meaning.

13 MS. MOE: Yes, your Honor.

14 And I think at the point at which we're parsing jury  
15 notes like statutes this finely, I think it illustrates the  
16 point that this note is confusing; that we're not sure what the  
17 jury is asking about either factually or legally.

18 The question is about the second element; and so we  
19 think the proper course is to refer the jury to those  
20 particular instructions. And the jury is free to send a  
21 clarifying note, if they wish to do so. But I think when we  
22 are parsing commas this finely in a note that is unclear, it's  
23 unclear which clauses are modifying which clauses, or which  
24 flights we're even talking about, I think it's far too  
25 confusing to give simple answers here.

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1 THE COURT: I can't answer this ambiguous question no.  
2 I don't know that the answer is no, even with the ambiguity;  
3 because I don't know if what they have in mind is an aiding and  
4 abetting question, which we haven't discussed yet.

5 MS. MENNINGER: They never used the word "abet."

6 THE COURT: That's true. I won't assume that's the  
7 question for purposes of the answer, but I also don't assume  
8 the meaning that you've put on it for purposes of the answer.  
9 So the only solution here is to say, I direct you to consider  
10 the full instruction on Element 2 of Count Four on page 28.

11 MS. MENNINGER: Our request would be to emphasize the  
12 portion of that that talks about the purpose of the travel.  
13 Because they have highlighted the purpose of the travel in  
14 their question. And the way I read it is certainly that that's  
15 their question. If they don't have evidence that the intent on  
16 the return flight was for purposes of sexual activity, then I  
17 do think the answer, as Mr. Everdell said is, no, they can't  
18 convict.

19 MS. STERNHEIM: May I have a moment?

20 (Counsel conferred)

21 MR. EVERDELL: Your Honor, I'm sorry to raise another  
22 issue, but I think we have to, given the note itself.

23 One moment. Sorry. The photograph on the phone keeps  
24 disappearing.

25 We're talking about they are referring to Count Four,

LCRVMAXT

1 which is the substantive transportation count, which, as we  
2 know, has to deal with the violation of New York law. And they  
3 are talking about flights to New Mexico; and can she be found  
4 guilty on the second element of Count Four regarding these  
5 flights to New Mexico.

6 So I think we may have to respond to the jury on that  
7 score as well, which is the fact that they have to be  
8 considering New York events for Count Four, rather than -- or  
9 violations of New York law, which wouldn't occur in New Mexico  
10 for there to be a conviction on Count Four.

11 MS. MOE: Your Honor, I think that's exactly why we  
12 proposed directing the jurors to the entirety of the  
13 instruction, which says just that. The second paragraph of  
14 that same instruction reminds the jury, as the instruction does  
15 throughout, that we're talking about New York Penal Law,  
16 Section 130.55. And so I think our proposal remains the same  
17 that they be referred to the entirety of the instruction, which  
18 includes that language, among other aspects of this particular  
19 element.

20 THE COURT: Yes.

21 MS. STERNHEIM: Judge, may I be heard for a moment?

22 THE COURT: Sure.

23 MS. STERNHEIM: I think the fact that the jury has  
24 mentioned New Mexico regarding a count that pertains to New  
25 York is not just cleared up by referring them to the

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1 instruction. Clearly they are making an error concerning which  
2 state begins with "New." And I suggest that if the Court  
3 wishes to refer them to the charge, the Court also clears up  
4 the fact that Count Four requires a violation of New York law,  
5 not New Mexico law.

6 THE COURT: That's certainly why we should refer them  
7 to the whole charge. That's what lines 7 through 10 make  
8 clear.

9 MS. MOE: Yes, your Honor.

10 The only illegal sexual activity identified in the  
11 entirety of the jury charge is a statute in New York. There  
12 cannot be any risk of confusion on that score. This particular  
13 charge reminds the jury of that and includes that language as  
14 well. The jury has not been charged about any laws in New  
15 Mexico; so there can't be any risk of confusion for exactly  
16 that reason.

17 MR. EVERDELL: I just don't understand the confidence  
18 about how there can be no possible confusion --

19 THE COURT: This conversation is stopping.

20 My decision is to refer them back to this charge,  
21 because it is a proper instruction on the second element to  
22 Count Four. I do not know what this question means. It's too  
23 difficult to parse factually and legally what they're asking.  
24 So the only option in those circumstances is to direct them  
25 back to the count.

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1           So I'll take any requests beyond simply saying, I  
2       received your note. I refer you to instruction number 21 on  
3       page 28. Please consider carefully the full instruction.

4           MS. MOE: Yes, your Honor.

5           THE COURT: Mr. Everdell?

6           MR. EVERDELL: That's fine, your Honor.

7           THE COURT: Okay. I'll do that. And then -- well,  
8       let me write it, and then we'll send it back, and then we'll  
9       discuss -- because we have to bring them in to dismiss them.

10          So I received your note. I refer you to instruction  
11       number 21 on page 28. Please consider the entirety of the  
12       instruction.

13          MS. MOE: Yes, your Honor. Thank you.

14          THE COURT: Okay.

15          MR. EVERDELL: Without waiving our prior objection.

16          THE COURT: Understood.

17          All right. While Ms. Williams is handing that to the  
18       CSO, for extending deliberation times going forward.

19          MS. MOE: Yes, your Honor.

20          We've considered the matter. And the government's  
21       view is that is within the Court's discretion certainly to set  
22       a schedule for jury deliberations. Given the circumstances, we  
23       agree that it's prudent to advise the jury that, barring any  
24       scheduling complications, they should expect an extended day  
25       tomorrow.



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1 MS. MENNINGER: Your Honor, at this point, because it  
2 has only been three days, we believe that any suggestion that  
3 they should stay later is beginning to sound like urging them  
4 to hurry up, when clearly they know that they can deliberate as  
5 long as they want and they should be able to deliberate as long  
6 as they want. They haven't expressed any hesitation. They've  
7 been asking for transcripts, they've been asking for materials.

8 While we would not mind the Court giving an  
9 instruction much like it did last week, telling the jurors that  
10 should they choose to stay later on any given day, the Court  
11 can make arrangements for them to do so, we would object to  
12 trying to urge them to stay later if they are not asking to do  
13 so and aren't expressing any difficulty in proceeding with the  
14 deliberations that they are currently undertaking.

15 MS. MOE: Your Honor, the Court has previously  
16 extended certain days or contracted certain days, depending on  
17 our schedule; and, in fact, I think the first day of  
18 deliberations we had an extended day on the consent of both  
19 parties. We don't believe that sends any kind of signal, other  
20 than that the Court is setting a schedule. And we think that's  
21 appropriate here given the circumstances.

22 THE COURT: I think what we should do, I'll tell them  
23 that if deliberations are not complete starting tomorrow, I  
24 would like you to make yourselves available to deliberate until  
25 at least 6 p.m. each day. Of course, if you all agree to

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1 deliberate later than that, you're most welcome to do so.

2 Please let me know by note when you wish to stop, but the  
3 default going forward will be 6 p.m., unless anyone indicates  
4 to Ms. Williams that that constitutes a hardship. Okay?

5 MS. MENNINGER: That would be our concern, your Honor,  
6 obviously, that some of them do have hardships.

7 THE COURT: As I did last time, I'm going to tell them  
8 the default will be 6; but if it's a hardship, they should let  
9 Ms. Williams know, in which case -- so, again, the language  
10 will be, If deliberations are not complete starting tomorrow,  
11 I'd like you to make yourselves available to deliberate until  
12 at least 6 p.m. Of course, if you all agree to deliberate  
13 later than that, you're most welcome to do so. Please just let  
14 me know by note when you wish to stop. But the default going  
15 forward will be 6 p.m., unless anyone indicates to Ms. Williams  
16 on their way out that that is a hardship. Okay?

17 MS. MOE: Yes, your Honor. Thank you.

18 MS. MENNINGER: Your Honor, we would object to adding  
19 the "If deliberations are not complete." I think that any kind  
20 of suggestion that the deliberations should be resolving by a  
21 certain time or not resolving could potentially --

22 THE COURT: That is the precise language I used last  
23 week in asking if they wanted to sit on Thursday. It didn't  
24 cause them to think that they had to complete their  
25 deliberations.

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1 MS. MENNINGER: But the rest of the language, your  
2 Honor, last Thursday was "if you want to." And this one seems  
3 a little bit more like we're suggesting that you do it unless  
4 you have a hardship.

5 THE COURT: I clearly have discretion to set the  
6 schedule, there's no doubt about that. And I can do it over  
7 your objection. So I'm happy to give -- I think we should set  
8 it as a default, unless there's a hardship.

9 MS. MENNINGER: I understand that, your Honor. I just  
10 would request -- and it's our request that your Honor not  
11 include the language "unless deliberations are complete."

12 THE COURT: I will use the same language that I used  
13 last week. It's precisely the same language I used on multiple  
14 occasions without objection. And I don't want them to assume  
15 that I think it should take longer than that. That's the  
16 concern. So I don't want them to assume what I'm saying, that  
17 I'm suggesting it should take longer. I don't want them to  
18 assume it should take shorter. I'm happy to add, if you want,  
19 Of course, I don't mean this in any way to pressure you; you  
20 should take all the time you need.

21 MS. MENNINGER: Yes, very much would appreciate that,  
22 your Honor.

23 THE COURT: Ms. Moe.

24 MS. MOE: No objection, your Honor. Thank you.

25 THE COURT: All right. Bring in the jury.

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1 (Jury present)

2 THE COURT: Thank you, everyone. Hi, members of the  
3 jury. Please be seated.

4 I did receive your note asking to finish today at 5,  
5 so I brought you in to dismiss you.

6 A few things.

7 Of course, bear all of my instructions in mind.  
8 Please continue to take precautions in light of the increase in  
9 the variant. I need all of you here and healthy, of course.  
10 So take your masks, be cautious. I appreciate that.

11 You'll begin again tomorrow at 9 a.m. Same  
12 instructions: Wait till everyone is there, then begin your  
13 deliberations.

14 If deliberations are not complete starting tomorrow, I  
15 would like you to make yourselves available to deliberate until  
16 at least 6 p.m. Of course, if you all agree to deliberate  
17 later than that, you're most welcome to do so. Please just let  
18 me know by note when you wish to stop. But I'd like you to  
19 plan to deliberate until at least 6 p.m.

20 As with the last time, if that is a hardship that you  
21 can't do, let Ms. Williams know that on your way out and we'll  
22 adjust. But otherwise, please plan for 6 p.m. Of course, by  
23 this I don't mean to pressure you in any way. You should take  
24 all the time that you need.

25 With that, I bid you a good night.

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1 Be safe. And we'll see you tomorrow. Thank you.

2 (Jury not present)

3 THE COURT: Matters to take up?

4 MS. MOE: Not from the government, your Honor.

5 Thank you.

6 MS. STERNHEIM: Nothing.

7 THE COURT: Okay. I'll see you tomorrow.

8 Be safe, everyone.

9 (Adjourned to December 28, 2021 at 9:00 a.m.)

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